



POLICE DEPARTMENT

November 18, 2022

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In the Matter of the Charges and Specifications	:	Case No.
against -	:	2022-25007
Police Officer Brian Cheng	:	
Tax Registry No. 957452	:	
73 Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Penny Bluford-Garrett, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Brian Cheng, while assigned to the 73rd Precinct, on or about July 16, 2021, used unreasonable force against [REDACTED]

P.G. 221-01, Pages 1 and 2

FORCE GUIDELINES
GENERAL REGULATIONS

P.G. 221-02, Pages 1 and 2

USE OF FORCE

2. Said Police Officer Brian Cheng, while assigned to the 73rd Precinct, on or about July 16, 2021, engaged in conduct prejudicial to the good order and efficiency of the Department, to wit: said officer was discourteous to [REDACTED] when he made the following statements to her, in sum and substance: "Collect your shit and get out, you are going to jail," "Give me the key, stop fucking around," "You fucking closed the door on my face," "I will put it on you again, I will push you down the stairs too." (*As amended*)

P.G. 203-10, Page 1, Paragraph 5
A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

3. Said Police Officer Brian Cheng, while assigned to the 73rd Precinct, on or about July 16, 2021, engaged in conduct prejudicial to the good order and efficiency of the Department, to wit: said officer threatened [REDACTED] with the use of force. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5
A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

4. Said Police Officer Brian Cheng, while assigned to the 73rd Precinct, on or about July 16, 2021, did fail to activate his body-worn camera prior to engaging in police action.

P.G. 212-123, Page 1, Paragraph 4(a)

USE OF BODY-WORN CAMERAS

5. Said Police Officer Brian Cheng, while assigned to the 73rd Precinct, on or about July 16, 2021, engaged in conduct prejudicial to the good order and efficiency of the Department, to wit: said officer threatened to arrest [REDACTED] (*As amended*)

P.G. 203-10, Page 1, Paragraph 5
A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 27, 2022. Respondent, through his counsel, entered a plea of Guilty to the subject charges, and testified in mitigation of the penalty. The Department introduced into evidence Body-Worn Camera (“BWC”) footage from Respondent and his partner, as well as a TRI report. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner’s review. Having reviewed all of the evidence in this matter, I recommend that Respondent forfeit twenty-six (26) vacation days, and undergo training

SUMMARY OF EVIDENCE IN MITIGATION

This matter stems from a landlord-tenant dispute between the owner of a Brooklyn apartment (“the homeowner”) and her former tenant (“the tenant”). The parties stipulated that the homeowner had initiated eviction proceedings against the tenant, though they had not yet been finalized as of the date of the incident, which was July 16, 2021. At about 1900 hours that evening, the homeowner called police to report that an unknown woman was inside the apartment. Respondent and his partner handled the call.

Upon their arrival at the location, the officers learned that the unknown woman inside the apartment was the aunt of the tenant, who had recently vacated. The night before this incident, the aunt apparently had moved items back into the apartment. The encounter between the officers and the woman (“the aunt”) was captured in the BWC footage of Respondent (Dept. Ex. 2) and his partner (Dept. Ex. 1), and shows the following:

Respondent asks the aunt for her name, which she initially refuses to provide. Respondent twice tells her that if she lies to him, or does not give her name right now, she is going to jail. After she provides her name, Respondent, in an angry, aggressive tone, tells the

aunt, "Collect your shit, get out, or you're going to go to jail." She slowly starts gathering her possessions, and Respondent demands that she give him the key to the apartment. The aunt states that it's her nephew's key, and Respondent tells her, "Give me the key, stop fucking around." She eventually finds the key and hands it to Respondent, who again instructs her to collect what she needs and get out.

As the aunt is looking among several pairs of shoes for the ones she wants to wear, Respondent steps outside the room and hands the key to the homeowner. The aunt is on the phone with her nephew as she continues to search for her shoes. She bends down and pushes the apartment door in Respondent's direction as she looks behind the door for her shoes. Respondent angrily pushes the door back toward the aunt, apparently striking her in the shoulder area, and he screams at her for "pushing the fucking door at me." Respondent grabs the aunt's phone from her hands and orders her to get out. When the aunt tells him not to push the door on her, he responds, "I'll put it on you again, let's go." She exits the apartment with Respondent following behind her. On the way out, Respondent states to the aunt, "You pushed the fucking door in my face, I'll hit you again, go." He then adds, "I'll push you downstairs too, let's go." Once outside, Respondent returns the aunt's phone, and the encounter ends.

Respondent testified that he turned on his BWC approximately one and one-half minutes after his arrival. He acknowledged that he made the statements to the aunt that were captured in the footage. Respondent explained that the reason he became aggressive toward the aunt was because she was not being cooperative. He instructed the aunt to hurry up since she seemed to be deliberately dragging out the process of leaving. According to Respondent, after the aunt pushed the apartment door toward him, he forcibly pushed it back open because he was concerned about his partner being alone in the room with the aunt; although the aunt did not complain of any injury, Respondent acknowledged that his action constituted an unreasonable

use of force. The reason he took away her phone was that he did not want the nephew, who was the subject of an order of protection, to come to the location and escalate the situation.

Respondent conceded that he was wrong to threaten that he would push the aunt down the stairs, admitting that nothing the aunt had done warranted his saying that. He acknowledged that his overall conduct toward the aunt was neither courteous, professional, nor respectful. (Tr. 29, 36, 47-51, 55, 59, 65-66, 68)

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment record also was examined (*see* 38 RCNY §15-07). Information from his personnel record that was considered in making this penalty recommendation is in an attached memorandum.

Respondent, who was appointed to the Department on January 7, 2015, has pleaded guilty to each of the five charges against him, stemming from his interaction with the aunt on July 16, 2021. The Department Advocate recommends that Respondent forfeit 60 penalty days, that he be placed on one-year dismissal probation, and that he receive training in Tactical Communications. Counsel for Respondent argues that a penalty of 15 vacation days is warranted.

An appropriate penalty needs to address three areas of concern involving Respondent's conduct in this matter: the overall unprofessional manner in which he addressed the aunt, his use of force against her in slamming the apartment door into her shoulder, and his failure to activate his BWC in a timely manner.

With respect to Respondent's discourtesy and verbal threats (Specifications 2, 3, and 5), it was evident that Respondent's frustration with the aunt unduly affected his behavior toward her. Even if Respondent was well-intentioned in trying to remove the aunt from the apartment as quickly as possible, the manner in which he spoke to her was unacceptable. From the start, Respondent was disproportionately aggressive and impatient in how he addressed the aunt, including his harsh tone and gratuitous use of profanity. Additionally, his comments to the aunt went beyond mere discourtesy, particularly on the way out where he threatened to hit her again, and to throw her down the stairs. Respondent's use of such threatening language was troubling, and there needs to be appropriate accountability. The Disciplinary Guidelines provide for a presumptive penalty of 10 days for making threats, with an aggravated penalty up to 20 days. Viewed as a whole, an aggravated penalty of fifteen (15) vacation days is warranted here to address the totality of Respondent's verbal comments to the aunt, including his threats and his general discourtesy toward her.

With respect to the force used against the aunt, I agree with the Advocate's recommendation that Respondent forfeit 10 days, the presumptive penalty for non-deadly use of physical force where there is no injury. Although the aunt initially pushed the door shut as she was looking for her shoes, Respondent conceded that his act of pushing the door back into the aunt constituted an unreasonable use of force. Respondent's response was an impulsive, overreaction to the situation, for which there needs to be appropriate accountability. On balance, the presumptive penalty of ten (10) vacation days will fairly and adequately address the wrongful use of force in this particular case.

For Respondent's failure to activate his BWC in a timely manner, the Advocate asks for the presumptive penalty of three penalty days. Respondent acknowledged that there was a slight delay in activating his camera, about one-and-one-half minutes after he arrived at the location.

To his credit, he did activate his camera very soon after entering the apartment, and captured almost the entire incident. Under these circumstances, a mitigated penalty of one (1) vacation day is warranted.

The Department Advocate also asks that a period of dismissal probation be imposed. In support of that position, the Advocate notes that prior to this incident, Respondent was involved in another civilian encounter in which he allegedly was discourteous. However, that matter was not adjudicated until *after* the present incident occurred, at which time it was resolved with a Command Discipline. As such, this was not a situation where Respondent had just been warned about discourteous behavior, and then proceeded to act discourteously in this case, which would have been more problematic. Under the specific facts of this case, I am not persuaded that a period of monitoring is warranted for Respondent, who has no formal disciplinary record in more than seven years with the Department, and has accepted responsibility for his actions here. DP

Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent forfeit fifteen (15) vacation days for the discourtesy and verbal threats, ten (10) vacation days for the use of force, and one (1) vacation day for the BWC charge, with those penalties to run consecutively, bringing the total to twenty-six (26) vacation days, a significant loss of days that will hopefully serve as a deterrent to future misconduct. Additionally, I recommend that Respondent receive training as suggested by the Advocate.

Respectfully submitted,



Jeff S. Adler

Assistant Deputy Commissioner Trials

APPROVED

APR 26 2023

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER BRIAN CHENG
TAX REGISTRY NO. 957452
DISCIPLINARY CASE NO. 2022-25007

Respondent was appointed to the Department on January 7, 2015. On his three most recent annual performance evaluations, he was rated "Exceeds Expectations" for 2019, 2020 and 2021. He has been awarded one medal for Excellent Police Duty.

Respondent has no formal disciplinary history. In February 2022, he was placed on Level 1 Force Monitoring for having received three or more CCRB complaints in a one-year period; monitoring remains ongoing.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials